

Exhibit B

COPY

FILED

MORGAN, LEWIS & BOCKIUS LLP
JOHN S. BATTENFELD, SBN 119513
300 South Grand Avenue
Twenty-Second Floor
Los Angeles, CA 90071-3132
Tel: 213.612.2500
Fax: 213.612.2501
email: jbattenfeld@morganlewis.com

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

MORGAN, LEWIS & BOCKIUS LLP
JENNIFER WHITE-SPERLING, SBN 166504
5 Park Plaza, Suite 1750
Irvine, CA 92614
Tel: 949.399.7000
Fax: 949.399.7001
email: jwhite-sperling@morganlewis.com

Attorneys for Defendants New York Life Insurance
Company and New York Life Insurance and
Annuity Corporation

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JUSTIN OPYRCHAL, individually,
and on behalf of all other similarly
current and former employees of
Defendants in the State of California,

Plaintiffs,

v.

NEW YORK LIFE INSURANCE
COMPANY, INC. a New York
corporation; NEW YORK LIFE AND
HEALTH INSURANCE COMPANY,
INC., a Delaware corporation; NEW
YORK LIFE INSURANCE AND
ANNUITY CORPORATION, INC., a
Delaware corporation; and DOES 1
through 100 inclusive,

Defendants.

Case No.

CV 07-00518SVW

DEFENDANTS NEW YORK LIFE
INSURANCE COMPANY AND
NEW YORK LIFE INSURANCE
AND ANNUITY CORPORATION'S
NOTICE OF REMOVAL OF
ACTION TO THE UNITED STATES
DISTRICT COURT FOR THE
CENTRAL DISTRICT OF
CALIFORNIA

1 DEFENDANTS NEW YORK LIFE INSURANCE COMPANY ("NYLIC")
2 and NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION
3 ("NYLIAC") (collectively herein, "NYL Defendants") give notice that this case is
4 hereby removed from the Superior Court of the State of California for the County
5 of Los Angeles, to the United States District Court for the Central District of
6 California. NYL Defendants remove this matter pursuant to 28 U.S.C.
7 Section 1332(d), 28 U.S.C. Section 1441, 28 U.S.C. Section 1446, and 28 U.S.C.
8 Section 1453, and state that this Court has jurisdiction over the action pursuant to
9 the Class Action Fairness Act of 2005. As and for their Notice of Removal, NYL
10 Defendants plead as follows:

11 1. This lawsuit is a civil action within the meaning of the Acts of
12 Congress relating to removal of class actions. *See* 28 U.S.C. § 1453.

13 2. Plaintiff Justin Opyrchal instituted this civil action in the Superior
14 Court of the State of California for the County of Los Angeles County, on or about
15 December 11, 2006, against Defendants New York Life Insurance, Inc., New York
16 Life and Health Insurance Company, Inc., and New York Life Insurance and
17 Annuity Corporation, Inc., which action was assigned Case Number BC 363208 in
18 said court.

19 3. This action was therefore commenced after the effective date of the
20 Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2 (enacted Feb. 18,
21 2005), *codified at* 28 U.S.C. §§ 1332(d), 1453 and 1711-1715.

22 4. The Summons, Complaint, Notice of Case Assignment, Civil Case
23 Cover Sheet, and Civil Case Cover Sheet Addendum and Statement of Location,
24 Notice of Case Assignment and ADR Information Package were served upon
25 Defendants on December 22, 2006, by process server. True and correct copies of
26 the documents are attached hereto as Exhibit A.

27 5. No other proceedings have been held in this action and the Summons,
28

1 Complaint, Notice of Case Assignment, Civil Case Cover Sheet, Civil Case Cover
2 Sheet Addendum and Statement of Location and ADR Information Package,
3 (attached hereto as Exhibit A) constitute all process, pleadings and orders filed in
4 this case.

5 6. Because this Notice of Removal is filed within thirty days of service of
6 the Summons, Complaint and Civil Case Cover Sheet upon the NYL Defendants, it
7 is timely under 28 U.S.C. § 1446(b) and 28 U.S.C. § 1453.

8 7. This action was brought by a putative representative person on behalf
9 of a proposed class of individuals. Ex. A, ¶¶ 6, 8. As such, this matter is a
10 purported class action as that term is defined pursuant to 28 U.S.C. § 1332(d)(1)(B)
11 and 28 U.S.C. § 1453.¹

12 8. This action originally could have been filed in this Court under
13 28 U.S.C. § 1332(d) because this matter was brought as a class action, complete
14 diversity of citizenship exists between one or more members of the putative class
15 and the Defendants, and the amount in controversy exceeds, in the aggregate,
16 \$5,000,000 exclusive of interest and costs. Removal is therefore proper pursuant to
17 28 U.S.C. §§ 1446 and 1453.

18 19 **I. DIVERSITY OF CITIZENSHIP EXISTS**

20
21 9. NYL Defendants are informed and believe that Plaintiff Justin
22 Opyrchal is, and was at the institution of this civil action, and was at all times
23 intervening, a citizen and resident of California.

24 10. Defendant NYLIC is, and was at the time of the institution of this civil
25 action, a mutual life insurance company organized and existing under and by virtue
26 of the laws of the State of New York, having its principal place of business (where

27
28 ¹ NYL Defendants dispute, and reserve the right to contest at the appropriate time, Plaintiff's allegations that this action can properly proceed as a class action.

1 the majority of its executive and administrative functions are performed) in the
2 State of New York, and therefore is a citizen of New York for the purposes of
3 determining diversity. 28 U.S.C. § 1332(c)(1).

4 11. Defendant NYLIAC is, and was at the time of the institution of this
5 civil action, a corporation organized and existing under and by virtue of the laws of
6 the State of Delaware, having its principal place of business (where the majority of
7 its executive and administrative functions are performed) in the State of New York,
8 and therefore is a citizen of Delaware and New York for the purposes of
9 determining diversity. 28 U.S.C. § 1332(c)(1).

10 12. The NYL Defendants are informed and believe that Defendant New
11 York Life and Health Insurance Co. ("NYLHIC") was or is incorporated in the
12 State of Delaware, and its principal place of business was or is in Tennessee.
13 NYLHIC was sold in 1998 and has not been affiliated with either NYL Defendant
14 since then. The NYL Defendants are informed and believe that NYLHIC's alleged
15 conduct does not form "a significant basis for the claims asserted by the proposed
16 Plaintiff class." 28 U.S.C. § 1332(d)(4).

17 13. The NYL Defendants' business activities do not substantially
18 predominate in any one state, and the amount of Defendants' business activity in
19 California is not significantly larger than in other states in which they conduct
20 business.

21 14. As a result, Defendants are not now, and were not at the time of the
22 filing of the Complaint, citizens of the State of California within the meaning of the
23 Acts of Congress relating to the removal of causes.

24 15. Based upon information and belief and the allegations in the
25 Complaint, therefore, at least one member of the proposed class of plaintiffs
26 (Opyrchal) is a citizen of a state different from the Defendant.
27

1 **II. THE AMOUNT-IN-CONTROVERSY REQUIREMENT IS**
 2 **SATISFIED**

3 16. Pursuant to CAFA, the claims of the individual members in a class
 4 action are aggregated to determine if the amount in controversy exceeds the sum or
 5 value of \$5,000,000. *See* 28 U.S.C. § 1332(d)(6).

6 17. In addition, Congress intended for federal jurisdiction to be
 7 appropriate under CAFA “if the value of the matter in litigation exceeds \$5,000,000
 8 either from the viewpoint of the plaintiff or the viewpoint of the defendant, and
 9 regardless of the type of relief sought (e.g., damages, injunctive relief, or
 10 declaratory relief).” (Senate Judiciary Report, S. REP. 109-14, at 42.)

11 18. The Complaint seeks relief on behalf of a putative class of all “current
 12 and former employees of Defendants throughout the State of California, who have
 13 been employed by Defendants in the State of California within the four (4) years
 14 before the filing of this Complaint – and continuing to trial or until an appropriate
 15 ending date for a Class Period – as Agents for Defendants (and/or in similar
 16 positions and/or with similar job titles, duties, and responsibilities) working under a
 17 “TAS Plan Agreement” which defines them as employees of Defendants.” Ex. A,
 18 ¶ 8. Based on this alleged class definition, NYL Defendants have had relationships
 19 with approximately 2,070 putative class members in California from December 1,
 20 2002 to the present.

21 19. The Complaint in the instant action purports to allege multiple claims
 22 on behalf of each of the putative class members for wages, other damages and
 23 penalties under various sections of the California Labor Code (“Labor Code”), and
 24 for restitution under Business and Professions Code § 17200. *See, e.g.*, Ex. A.,
 25 ¶¶ 30-70, and Prayer for Relief, ¶¶ 1-15.

26 20. Plaintiff claims that, pursuant to the Labor Code and California
 27 Industrial Welfare Commission Wage Order No. 4-2001, Defendants failed to pay
 28

1 Plaintiff and the putative class minimum wage as required by law. Ex. A, ¶ 30.
2 Specifically, Plaintiff alleges that he and the putative class members were required
3 to attend training classes three days per during the "mandatory training period"
4 during the beginning of their employment with Defendants and that Plaintiff and
5 the putative class members were not paid minimum wage for the time spent in the
6 training classes. Ex. A, ¶ 30.

7 21. Plaintiff makes this claim on behalf of every employee who worked
8 for Defendants in the four years prior to the filing of the Complaint. Ex. A, ¶ 31.

9 22. Plaintiff claims that he and the putative class were required to attend
10 training three days per week during the mandatory training period. Ex. A, ¶ 30.
11 Plaintiff further alleges that the classes lasted eight hours per day and the
12 mandatory training period was three months long. Ex. A, ¶10. Therefore, pursuant
13 to these allegations, Plaintiff alleges that he was not paid for approximately 288
14 hours of time.

15 23. Under California Industrial Welfare Commission Wage Order No. 4-
16 2001, the minimum wage during the majority of the applicable time period was
17 \$6.75 per hour. Thus, according to Plaintiff's theory of damages, his individual
18 claim for unpaid minimum wages amounts to approximately 288 hours x
19 \$6.75/hour = \$1,944.00.

20 24. According to Plaintiff's theory of damages, the putative class's claim
21 for unpaid minimum wages amounts to approximately 288 hours x \$6.75/hour x
22 2,070 putative class members = \$4,024,080.00.

23 25. The Complaint also alleges that Plaintiff and the members of the
24 putative class are entitled to liquidated damages for the alleged minimum wage
25 violation pursuant to Labor Code Sections 1194 and 1194.2. Ex. A, ¶ 32. Labor
26 Code Section 1194.2 provides for the possible recovery of liquidated damages
27 equal to the amount of wages that were unpaid. Thus, Plaintiff alleges that he and
28

1 the putative class are due an additional \$4,024,080.00 in liquidated for the alleged
2 minimum wage violation, for a total of \$8,048,160.00 in wages and liquidated
3 damages for that claim alone.

4 26. The Complaint also alleges that Defendants violated California
5 Industrial Welfare Commission Wage Order No. 4-2001 by failing to provide him
6 and the putative class with itemized wage statements. Ex. A, ¶ 44. Plaintiff alleges
7 that, as a result, he and the putative class are entitled to various penalties, interest
8 and attorneys' fees pursuant to Labor Code Section 226. Ex. A, ¶ 45.

9 27. Labor Code § 226 states that an injured employee can recover up to an
10 aggregate penalty of \$4,000. Thus, under Plaintiff's theory of the case, the
11 potential aggregate penalties under Section 226 for 2,070 putative class members
12 could be \$8,280,000.00.

13 28. Further, Plaintiff seeks to represent putative class members who are
14 former employees of Defendants and who allegedly did not to receive all wages due
15 upon termination of their relationship with Defendants. Ex. A, ¶ 51. Plaintiff
16 alleges claims for "waiting time" penalties pursuant to Labor Code Section 203 on
17 behalf of this putative subclass. Ex. A, ¶ 51. Labor Code Section 203 provides for
18 a penalty of up to 30 days of daily wages. Assuming waiting time penalties based
19 on the minimum wage of \$6.75 per hour, at eight hours per day, for thirty days,
20 penalties could be a total of \$1,620.00 per former employee, according to Plaintiff's
21 theory of the case.

22 29. Plaintiff also seeks recovery for the putative class under Labor Code
23 Section 2802 for reimbursement for necessary expenditures. Ex. A, ¶¶ 38, 55.
24 Plaintiff also seeks exemplary and punitive damages for the putative class members
25 under various laws. Ex. A., Prayer for Relief ¶ 10. Plaintiff also seeks attorneys'
26 fees under various laws. *See, e.g.*, Ex. A, Prayer for Relief, ¶¶ 11, 12.

27 30. Thus, although NYL Defendants deny Plaintiff's factual allegations or
28

1 that he or the putative class that he purports to represent are entitled to the relief for
 2 which he has prayed, based on Plaintiff's allegations and prayer for relief, the
 3 amount in controversy clearly exceeds the \$5,000,000 threshold set forth under 28
 4 U.S.C. § 1332(d)(2).

5 **IV. THE OTHER PREREQUISITES FOR REMOVAL HAVE BEEN**
 6 **SATISFIED**

7 31. As set forth above, this Notice of Removal is filed within thirty days of
 8 service of the Summons and Complaint upon NYL Defendants.

9 32. NYL Defendants will promptly serve Plaintiff with this Notice of
 10 Removal and will promptly file a copy of this Notice of Removal with the clerk of
 11 the state court in which the action is pending, as required under 28 U.S.C.
 12 § 1446(d).

13 33. NYL Defendants have sought no similar relief.

14 34. The prerequisites for removal under 28 U.S.C. §§ 1441 and 1453 have
 15 been met.

16 35. Because this Court has original jurisdiction under the provisions of 28
 17 U.S.C. § 1332(d), removal of this action is proper pursuant to 28 U.S.C. § 1441.

18 **WHEREFORE**, NYL Defendants, desiring to remove this case to the United
 19 States District Court for the Central District of California, pray that the filing of this
 20 Notice of Removal shall effect the removal of the suit to this Court.

21 Dated: January 22, 2007

MORGAN, LEWIS & BOCKIUS LLP
 JOHN S. BATTENFELD
 JENNIFER WHITE-SPERLING

22
 23
 24
 25 By

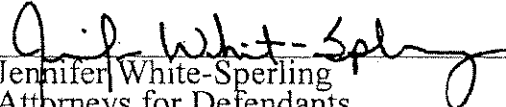

 Jennifer White-Sperling
 Attorneys for Defendants
 New York Life Insurance Company
 and New York Life Insurance and
 Annuity Corporation

Exhibit A

12/22/06 10 00

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO)**

NEW YORK LIFE INSURANCE COMPANY, INC., a New York corporation; NEW YORK LIFE AND HEALTH INSURANCE COMPANY, INC., a Delaware corporation; NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION, INC., a Delaware corporation; and DOES 1 through 100 inclusive

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTA DEMANDANDO EL DEMANDANTE)**

JUSTIN OPYRCHAL, individually, and on behalf of all other similarly situated current and former employees of Defendants in the State of California,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

DEC 11 2006

JOHN A. CLARKE, Executive Officer/Clerk

By D. Garcia, Deputy
D. Garcia

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DIAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es)

**SUPERIOR COURT OF CALIFORNIA IN AND FOR LOS ANGELES
CENTRAL DISTRICT**

111 North Hill Street

Los Angeles, CA 90012

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

A. Mark Pope / POPE, BERGER & WILLIAMS, LLP

Douglas J. Campion / Law Offices of Douglas J. Campion

550 West C Street, Suite 1400, San Diego, CA 92101

411 Camino Del Rio South, #301, San Diego, CA 92108

(619) 595-1366

(619) 299-2091

DATE: DEC 11 2006

(Fecha)

JOHN A. CLARKE, CLERK

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify)

Daniel Garcia

- ☒ on behalf of (specify): **NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION, INC., a Delaware Corporation**
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify)
- ☒ by personal delivery on (date)

Page 1 of 1

11/22/06 10:00

SUM-100

**SUMMONS
(CITACION JUDICIAL)****NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

NEW YORK LIFE INSURANCE COMPANY, INC., a New York corporation; NEW YORK LIFE AND HEALTH INSURANCE COMPANY, INC., a Delaware corporation; NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION, INC., a Delaware corporation; and DOES 1 through 100 inclusive
YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTA DEMANDANDO EL DEMANDANTE):

JUSTIN OPYRCHAL, individually, and on behalf of all other similarly situated current and former employees of Defendants in the State of California,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

CONFORMED COPY
 OF ORIGINAL FILED
 Los Angeles Superior Court

DEC 11 2006

John A. Clark, Executive Officer/Clerk

By D. Garcia, Deputy

D. Garcia

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DIAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA IN AND FOR LOS ANGELES
 CENTRAL DISTRICT
 111 North Hill Street

Los Angeles, CA 90012

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

A. Mark Pope / POPE, BERGER & WILLIAMS, LLP
 550 West C Street, Suite 1400, San Diego, CA 92101
 (619) 595-1366

Douglas J. Campion / Law Offices of Douglas J. Campion
 411 Camino Del Rio South, #301, San Diego, CA 92108
 (619) 299-2091

DATE: DEC 11 2006

(Fecha)

JOHN A. CLARKE, CLERK

By

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010))

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
 2. ☐ as the person sued under the fictitious name of (specify)

Daniel Garcia

3. ☒ on behalf of (specify):
 under: ☒ NEW YORK LIFE INSURANCE COMPANY, INC., a New York Corporation

- ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
 4. ☒ by personal delivery on (date):

1 A. Mark Pope, Esq. (Cal. State Bar No. 77798)
 2 Harvey C. Berger, Esq. (Cal. State Bar No. 102973)
 3 Aaron A. Hayes, Esq. (Cal. State Bar No. 236122)
POPE, BERGER & WILLIAMS, LLP
 4 550 West "C" Street, Suite 1400
 San Diego, California 92101
 Telephone: (619) 595-1366
 Facsimile: (619) 236-9677

CONFORMED COPY
 OF ORIGINAL FILED
 Los Angeles Superior Court

DEC 11 2006

John A. Clark, Executive Officer/Clerk
 By D. Garcia, Deputy

5 Douglas J. Campion, Esq. (Cal. State Bar No. 75381)
 6 **LAW OFFICES OF DOUGLAS J. CAMPION**
 411 Camino Del Rio South, Suite 301
 7 San Diego, California 92108
 Telephone: (619) 299-2091
 8 Facsimile: (619) 858-0034

9 Attorneys for Named Plaintiff JUSTIN OPYRCHAL, individually, and on behalf of all other
 10 similarly situated current and former employees of Defendants in the State of California

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **IN AND FOR THE COUNTY OF LOS ANGELES**

13 JUSTIN OPYRCHAL, individually, and on
 14 behalf of all other similarly situated current
 and former employees of Defendants in the
 15 State of California,

Case No. BC363208
 CLASS ACTION

16 Plaintiffs,

17 v.

**PLAINTIFFS' CLASS ACTION
 COMPLAINT**

18 NEW YORK LIFE INSURANCE
 COMPANY, INC., a New York corporation;
 19 NEW YORK LIFE AND HEALTH
 INSURANCE COMPANY, INC., a Delaware
 20 corporation; NEW YORK LIFE
 INSURANCE AND ANNUITY
 21 CORPORATION, INC., a Delaware
 corporation; and DOES 1 through 100
 22 inclusive,

**[LABOR CODE VIOLATIONS,
 UNFAIR COMPETITION]**

23 Defendants.

Complaint Filed: _____
 Trial Date: Not Set

24
 25 Named Plaintiff JUSTIN OPYRCHAL, individually, and on behalf of all other similarly
 26 situated current and former employees of Defendants in the State of California (hereinafter,
 27 collectively referred to as "Plaintiffs"), allege as follows:
 28

I. JURISDICTIONAL AND VENUE ALLEGATIONS

1. Plaintiffs are informed and believe, and thereon allege that Defendant NEW YORK LIFE INSURANCE COMPANY, INC., is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of New York, with its headquarters and/or principal place of business in New York, New York. Plaintiffs are further informed and believe, and thereon allege that Defendant NEW YORK LIFE INSURANCE COMPANY, INC., is, and at all times relevant hereto was, a foreign corporation qualified to transact and conduct business in the State of California, and that at all times relevant hereto did, and still does, transact and conduct business throughout the State of California, including but not limited to the County of Los Angeles, where Named Plaintiff OPYRCHAL performed work for Defendants. Plaintiffs are further informed and believe, and thereon allege that Defendant NEW YORK LIFE INSURANCE COMPANY, INC., does, and at all times relevant hereto has, sold insurance policies to consumers throughout the State of California and operated offices within the State of California where Plaintiffs have worked. Defendant NEW YORK LIFE INSURANCE COMPANY, INC., is thus alleged to be one of Plaintiffs' "employers" as it relates to the claims in this lawsuit.

2. Plaintiffs are informed and believe, and thereon allege that Defendant NEW YORK LIFE AND HEALTH INSURANCE COMPANY, INC., is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its headquarters and/or principle place of business in New York, New York. Plaintiffs are further informed and believe, and thereon allege that Defendant NEW YORK LIFE AND HEALTH INSURANCE COMPANY, INC., is, and at all times relevant hereto was, a foreign corporation qualified to transact and conduct business in the State of California, and that at all times relevant hereto did, and still does, transact and conduct business throughout the State of California, including but not limited to the County of Los Angeles. Plaintiffs are further informed and believe, and thereon allege that Defendant NEW YORK LIFE AND HEALTH INSURANCE COMPANY, INC., does, and at all times relevant hereto has, sold insurance policies to consumers throughout the State of California and operated offices within the State of California where Plaintiffs have worked. Defendant NEW YORK LIFE AND HEALTH INSURANCE COMPANY, INC., is thus alleged to

1 be one of Plaintiffs' "employers" as it relates to the claims in this lawsuit.

2 3. Plaintiffs are informed and believe, and thereon allege that Defendant NEW YORK
3 LIFE INSURANCE AND ANNUITY CORPORATION, INC., is, and at all times relevant hereto
4 was, a corporation organized and existing under and by virtue of the laws of the State of Delaware,
5 with its headquarters and/or principle place of business in Dallas, Texas. Plaintiffs are further
6 informed and believe, and thereon allege that Defendant NEW YORK LIFE INSURANCE AND
7 ANNUITY CORPORATION, INC., is, and at all times relevant hereto was, a foreign corporation
8 qualified to transact and conduct business in the State of California, and that at all times relevant
9 hereto did, and still does, transact and conduct business throughout the State of California, including
10 but not limited to the County of San Diego. Plaintiffs are further informed and believe, and thereon
11 allege that Defendant NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION, INC.,
12 does, and at all times relevant hereto has, sold insurance policies to consumers throughout the State
13 of California and operated offices within the State of California where Plaintiffs have worked.
14 Defendant NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION, INC., is thus
15 alleged to be one of Plaintiffs' "employers" as it relates to the claims in this lawsuit.

16 4. Therefore, Plaintiffs are informed and believe, and thereon allege that Defendants
17 NEW YORK LIFE INSURANCE COMPANY, INC., NEW YORK LIFE AND HEALTH
18 INSURANCE COMPANY, INC., and NEW YORK LIFE INSURANCE AND ANNUITY
19 CORPORATION, INC., (hereinafter, collectively referred to as "Defendants") are each subject to
20 the jurisdiction of the State of California, and specifically may be sued on the causes of action herein
21 in the County of Los Angeles. Plaintiffs are further informed and believe, and thereon allege that this
22 Court is the proper Court, and this action is properly filed in the County of Los Angeles, because:
23 for part or all of the "Class Period" that Plaintiffs will seek certification of in this case, some or all
24 of Defendants' and/or DOES 1 through 100's obligations and liabilities to Plaintiffs arose in the
25 State of California, and within the County of Los Angeles; for part or all of the Class Period that
26 Plaintiffs will seek certification of in this case, Defendants and/or DOES 1 through 100 maintained
27 offices and transacted business in the State of California, and within the County of Los Angeles; and
28 for part or all of the Class Period that Plaintiffs will seek certification of in this case, work was

1 performed by Plaintiffs and made the subject of this action in the State of California, and within the
2 County of Los Angeles.

3 II. FACTUAL ALLEGATIONS

4 5. Plaintiffs hereby reallege, and incorporate by reference in this Section as though set
5 forth fully herein, the allegations contained in Paragraphs 1 through 4, above.

6 6. Plaintiffs bring this employment Class Action against Defendants and DOES 1
7 through 100 (herein, collectively referred to as "Defendants") to recover for their wage claims,
8 including: unpaid wages and wage benefits; violations of minimum wage, unreimbursed business
9 expenses; statutory penalties; waiting time penalties; restitution and/or disgorgement related to
10 Defendants' unlawful and unfair business practices arising from the Plaintiffs' wage and business
11 expense claims; interest, attorneys' fees, costs and expenses; nominal, compensatory, punitive and
12 exemplary damages; and injunctive relief. Plaintiffs reserve the right to name additional potential
13 Class Representatives.

14 7. Plaintiffs are informed and believe, and thereon allege that Defendants' primary
15 business activity in the State of California is as an insurance company selling insurance policies and
16 financial products to consumers using Plaintiffs, employed as agents, through offices in the State of
17 California. Principally, Defendants market and sell insurance policies to their customers and through
18 agents. Therefore, for Plaintiffs' wage and expense reimbursement claims as alleged herein,
19 Defendants are obligated to comply with certain portions of the California Industrial Welfare
20 Commission Wage Order No. 4-2001, originally and as amended. Further, for Plaintiffs' wage
21 claims and expense reimbursement claims as alleged herein, Defendants are obligated to comply
22 with applicable provisions of the California Labor Code.

23 8. Plaintiffs are informed and believe, and thereon allege that Named Plaintiff JUSTIN
24 OPYRCHAL was employed by Defendants in the State of California within the four (4) years before
25 the filing of this Complaint as an "Agent" for Defendants. Plaintiffs generally are current and former
26 employees of Defendants throughout the State of California, who have been employed by Defendants
27 in the State of California within the four (4) years before the filing of this Complaint – and
28 continuing to trial or until an appropriate ending date for a Class Period – as Agents for Defendants

1 (and/or in similar positions and/or with similar job titles, duties, and responsibilities) working under
2 a "TSA Plan Agreement" which defines them as employees of Defendants.

3 9. Plaintiffs are informed and believe, and thereon allege that as Agents for Defendants
4 (and/or in similar positions and/or with similar job titles, duties, and responsibilities), Plaintiffs do
5 work and have worked for Defendants throughout the State of California within the four (4) years
6 before the filing of this Complaint, to conduct and transact Defendants' insurance and financial
7 products business. Specifically, Agents act as salespersons to Defendants' customers and potential
8 customers. Agents are based out of one of Defendants' offices in cities throughout California. The
9 job requirements of all Agents are the same or substantially similar, and they are principally to sell
10 Defendant's insurance policies or other financial products. Named Plaintiff JUSTIN OPYRCHAL
11 was employed by Defendants in the State of California within the four (4) years before the filing of
12 this Complaint as an Agent for Defendants.

13 10. Plaintiffs are informed and believe, and thereon allege that all Agents are typically
14 required to attend a mandatory three-month training class at the beginning of their employment, in
15 which they attend class for eight hours per day, three days per week. After the initial three month
16 training period, Plaintiffs are required to attend training for eight hours per day, two days per week.
17 While the Agents are engaged in and attending such orientation training classes, Agents are not
18 engaged in any activities directly related to marketing or selling policies or products to Defendants'
19 customers; such training classes are, however, intended to educate and train Agents how to act as
20 salespeople to sell the products and policies marketed by Defendants. Plaintiffs end up without any
21 payment for the time spent in training classes, and/or with payment less than the legal minimum
22 wage.

23 11. Plaintiffs are informed and believe, and thereon allege that during the first three years
24 of performing work for Defendants, Agents are employed pursuant to a written contract, the TSA
25 Plan Agreement, which declares that Plaintiffs are employees of Defendants, and that they must
26 devote their "entire time to the business of this employment."

27 12. Plaintiffs are informed and believe, and thereon allege that during their course of the
28 first three years of their employment with Defendants, Agents are unlawfully not paid all earned

1 wages as required by California law, are not provided itemized paychecks as required by California
2 law, are not guaranteed payment of minimum wage as required by California law, and are not
3 reimbursed for business expenses as required by California law and/or are improperly charged for
4 business expenses in contravention of California law. Therefore, Plaintiffs have been, for a period
5 of time within the four (4) years before the filing of this Complaint, improperly deprived of wages
6 and benefits of employment as described herein.

7 13. Plaintiffs are informed and believe, and thereon allege, that at all relevant times
8 herein, DOES 1 - 50, are individuals who are/were citizens and residents of the State of California.
9 Plaintiffs are further informed and believe, and thereon allege, that at all relevant times herein DOES
10 1 - 50 owned, controlled, and/or managed the corporate affairs of Defendants and other of the DOE
11 Defendant business entities, and/or directly or indirectly exercised operational control over the
12 wages, hours, and working conditions of Plaintiffs, and/or engaged in fraudulent and/or tortious
13 activity to the detriment of Plaintiffs. As such, DOES 1 - 50 are "employers" as a matter of law for
14 purposes of imposing personal liability for the Labor Code violations alleged herein, pursuant to
15 California wage and hour laws.

16 14 Plaintiffs are informed and believe, and thereon allege that Defendants DOES 1 - 100
17 are, and at all times relevant hereto were, persons, corporations or other business entities, and
18 are/were qualified to transact and conduct business in the State of California, and did and do transact
19 and conduct business in the State of California, and are thus subject to the jurisdiction of the State
20 of California. Specifically, DOES 1 - 100 maintain offices, operate businesses, employ persons,
21 conduct business in, and illegally pay employees by illegal payroll practices and policies described
22 herein, throughout the State of California.

23 15. Plaintiffs are informed and believe, and thereon allege that at all relevant times herein
24 DOES 1 - 100 are/were the officers, owners, executives, directors, partners, or shareholders of
25 Defendants and of one another, who were acting on behalf of Defendants and each other in the
26 establishment of, ratification of, and/or execution of the illegal payroll practices and policies
27 described herein. Plaintiffs are further informed and believe, and thereon allege that at all times
28 relevant hereto DOES 1 - 100 have held ownership, officer, director and/or executive positions with

1 Defendants and with one another, which included decision-making responsibility for, and
2 establishment and execution of, illegal payroll practices and policies for Defendants and each other,
3 and Defendants and DOES 1 - 100 are, therefore, liable on the causes of action alleged herein
4 pursuant to California wage and hour laws. Plaintiffs are further informed and believe and thereon
5 allege that Defendants and DOES 1 - 100 are Plaintiffs' joint employers by virtue of a joint
6 enterprise; Plaintiffs perform, and have performed, services for each and every of Defendants, and
7 to the mutual benefit of all Defendants, and all Defendants share control of Plaintiffs as employees,
8 either directly or indirectly, and the manner in which Defendants' business is conducted.

9 16. Plaintiffs are informed and believe and thereon allege that there exists such a unity
10 of interest and ownership between and among all Defendants that the individuality and separateness
11 of those Defendants have ceased to exist. The business affairs of Defendants are, and at all times
12 relevant hereto were, so mixed and intermingled that the same cannot reasonably be segregated, and
13 the same are in inextricable confusion. Defendants are, and at all times relevant hereto were, used
14 by DOES 1 - 100 as a mere shell and conduit for the conduct of certain of Defendants' affairs. The
15 recognition of the separate existence of Defendants would not promote justice, in that it would
16 permit Defendants to insulate themselves from liability to Plaintiffs. Accordingly, Defendants and
17 DOES 1 - 100 constitute the alter egos of each other, and the fiction of their separate existence must
18 be disregarded at law and in equity, because such disregard is necessary to avoid fraud and injustice
19 to Plaintiffs herein.

20 17. Plaintiffs are informed and believe and thereon allege (unless otherwise alleged in
21 this Complaint), that at all relevant times herein, Defendants and DOES 1 - 100 were the agents,
22 employees and/or servants, masters or employers of each other and of the remaining DOES 1 - 100,
23 and in doing the things herein alleged, were acting within the course and scope of such agency or
24 employment, and with the approval and ratification of each of the other Defendants.

25 18. Plaintiffs are informed and believe and thereon allege that each and every one of the
26 acts and omissions alleged herein were performed by, and/or attributable to, all Defendants, each
27 acting as agents and/or employees, and/or under the direction and control of each of the other
28 Defendants, and that said acts and failures to act were within the course and scope of said agency,

1 employment and/or direction and control, and were committed willfully, maliciously, oppressively,
2 and fraudulently.

3 19. The true names and capacities, whether individual, corporate, associate, or otherwise,
4 of DOES 1 - 100, inclusive, are unknown to Plaintiffs, who therefore sue the DOE Defendants by
5 fictitious names. Plaintiffs will amend this Complaint to show their true names and capacities when
6 they have been ascertained.

7 20. At all relevant times alleged herein Plaintiffs were employed by Defendants under
8 a written employment agreement, the TSA Plan Agreement. In perpetrating the acts and omissions
9 alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy and
10 practice of not paying Plaintiffs wages owed for certain work performed, of not reimbursing
11 Plaintiffs' business expenses and/or improperly charging Plaintiffs for business expenses, of not
12 providing Plaintiffs with properly itemized wage statements, and of failing to pay Plaintiffs all wages
13 owed at the time of termination, all in violation of certain provisions of the California Industrial
14 Welfare Commission Wage Order No.4-2001, originally and as amended, and certain provisions of
15 the California Labor Code, as described herein, and in violation of the California Business and
16 Professions Code, sections 17200, *et. seq.*

17 21 As a direct and proximate result of the unlawful actions of Defendants, Plaintiffs have
18 suffered and continue to suffer from loss of wages, expenses, and earnings in amounts as yet
19 unascertained, but subject to proof at trial in amounts in excess of the minimum jurisdiction of this
20 Court.

21 III. CLASS ACTION ALLEGATIONS

22 22. Plaintiffs hereby reallege, and incorporate by reference in this Section as though set
23 forth fully herein, the allegations contained in Paragraphs 1 through 21. above.

24 23. This action is appropriately suited for a Class Action because:

25 a. The potential class is a significant number because Plaintiffs are
26 informed and believe, and thereon allege, that within the past four (4) years
27 Defendants employed, at any one time, hundreds of Agents throughout the
28 State of California, believed to be well in excess of five hundred (500)

1 employees. There also are numerous former employees who were subjected
2 to the same or similar illegal payroll practices and policies. Joinder of all
3 current and former employees individually would be impractical;

4 b. This action involves common questions of law and fact to the
5 potential class because the action focuses on the Defendants' systematic
6 course of illegal payroll practices and policies throughout the State of
7 California, which was applied to all Agents and others similarly situated in
8 violation of the California Industrial Welfare Commission Wage Order No.
9 4-2001, originally and as amended, the California Labor Code, and the
10 California Business and Professions Code (which prohibits unfair and
11 unlawful business practices arising from such violations).

12 c. The claims of the Named Plaintiff (and as yet other unnamed Class
13 Representatives) are typical of the class because Defendants subjected all of
14 their Agents to similar and/or identical violations of the California Industrial
15 Welfare Commission Wage Order No. 4-2001, originally and as amended, the
16 California Labor Code, and the California Business and Professions Code
17 (which prohibits unfair and unlawful business practices arising from such
18 violations), and because all members of the class were employed pursuant to
19 the same (or similar) TSA Plan Agreement.

20 d. The Named Plaintiff (and as yet other unnamed Class
21 Representatives) is able to fairly and adequately protect the interests of all
22 members of the class because it is in their best interests to prosecute the
23 claims alleged herein to obtain full compensation due to them for all services
24 rendered and hours worked.

25 24. This suit seeks only recovery for economic injury on behalf of all Class Members and
26 it expressly is not intended to request any recovery for personal injury and claims related thereto.
27 Plaintiffs reserve the right to expand the Class definitions, and add Subclass definitions as necessary,
28 to seek recovery on behalf of additional persons as warranted as facts are learned in further

1 investigation and discovery.

2 25. The joinder of the Class Members is impractical and the disposition of their claims
3 in the class action will provide substantial benefits both to the parties and to the court. The Class
4 Members can be easily identified through Defendants' records.

5 26. Plaintiff Opyrchal will fairly and adequately represent and protect the interests of the
6 Class in that he has no interests antagonistic to the Class. Plaintiffs have retained counsel competent
7 and experienced in the prosecution of class action litigation.

8 27. Plaintiffs and the members of the Class have all suffered irreparable harm as a result
9 of the defendants' unlawful and wrongful conduct. Absent a class action, the Class and Subclass
10 members will continue to suffer losses and the potential for irreparable harm. In addition, these
11 violations of law will be allowed to proceed without remedy and the Defendants will likely retain
12 the substantial sums received as a result of their wrongdoing. Because of the size of the individual
13 Class Members' claims, few, if any, Class Members could afford to seek legal redress for the wrongs
14 complained of herein.

15 **IV. PLAINTIFFS' CAUSES OF ACTION**

16 28. Plaintiffs hereby reallege, and incorporate by reference in this Section as though set
17 forth fully herein, the allegations contained in Paragraphs 1 through 27, above.

18 **FIRST CAUSE OF ACTION:**

19 **FAILURE TO PAY MINIMUM WAGE,**

20 **UNDER THE LAWS OF THE STATE OF CALIFORNIA,**

21 **BY PLAINTIFFS EMPLOYED IN THE STATE OF CALIFORNIA**

22 **(By All Plaintiffs, Against All Defendants)**

23 29. Plaintiffs hereby reallege, and incorporate by reference in this Cause of Action as
24 though set forth fully herein, the allegations contained in Paragraphs 1 through 27, above. This cause
25 of action is plead by all Plaintiffs, against all Defendants.

26 30. Within the four (4) years before the filing of this Complaint, Defendants have
27 employed Plaintiffs as Agents (and/or in similar positions and/or with similar job titles, duties, and
28 responsibilities) throughout the State of California, to conduct and transact Defendants' insurance

1 and financial products business. Defendants have unlawfully denied Plaintiffs wages and other
2 benefits of employment, when as a matter of fact and law, Plaintiffs are Defendants' "employees"
3 pursuant to contract. As a result, Plaintiffs are, and have been, entitled to the protections of the
4 California Industrial Welfare Commission Wage Order No. 4-2001, originally and as amended, and
5 the California Labor Code, with regard to the payment of minimum wages for hours worked during
6 each Plaintiffs' mandatory training period at the beginning of their employment, for that period of
7 time that they were required to be in class three (3) days per week. Classes during these training
8 periods are intended to educate and train Agents on how to act as salespeople to sell the insurance
9 policies and financial products marketed by Defendants; however, during such training classes,
10 Agents are not engaged in any sales activities directly related to marketing or selling products and
11 service to Defendants' customers. Plaintiffs end up without any payment for the time spent in
12 training classes, and/or with payment less than the legal minimum wage.

13 31. The benefits and protections of the California Industrial Welfare Commission Wage
14 Order No. 4-2001, originally and as amended, and the California Labor Code, with regard to the
15 payment of minimum wages for hours worked during each Plaintiffs' mandatory training period at
16 the beginning of their employment (for the period that they are required to be in class three (3) days
17 per week), provide that for the four (4) years preceding the filing of this action, Plaintiffs should have
18 been paid minimum wages for all such hours worked, because as employees during such mandatory
19 training periods they were not and are not subject to the exclusion of Labor Code section 1171 as
20 outside salespersons.

21 32. In addition, Defendants have not paid Plaintiffs the minimum wage for all hours
22 worked during the period that they were in training for three (3) days per week. In violation of state
23 law, Defendants have refused to perform their obligations to properly compensate Plaintiffs at the
24 minimum wage for such hours worked. As a direct and proximate result, Plaintiffs have suffered,
25 and continue to suffer, substantial losses related to the use and enjoyment of such monies, lost
26 interest on such wages, and expenses and attorneys' fees in seeking to compel Defendants to fully
27 perform their obligation under state law, all to their respective damage in amounts according to proof
28 at time of trial, but in amounts in excess of the minimum jurisdiction of this Court. As Defendants'

1 conduct described herein violates the provisions of the California Industrial Welfare Commission
2 Wage Order No. 4-2001, originally and as amended, and the California Labor Code regarding the
3 payment of minimum wages to employees, Plaintiffs are thus entitled to recover all amounts for all
4 such hours worked, penalties pursuant to Labor Code section 203, liquidated damages, interest,
5 attorneys' fees, and court costs and expenses of suit, pursuant to Labor Code sections 1194 and
6 1194.2, according to proof at time of trial, but in amounts in excess of the minimum jurisdiction of
7 this Court. Plaintiffs are also entitled to recover, in addition to or in lieu of some or all such wages
8 and benefits, nominal, actual and compensatory damages in amounts according to proof at time of
9 trial, but in amounts in excess of the minimum jurisdiction of this Court.

10 33. Defendants' failure to properly compensate Plaintiffs at the minimum wage for all
11 hours worked, in violation of California law, was knowing and intentional. Defendants have refused
12 to pay the minimum wages properly due each Plaintiff for false and fraudulent reasons. All such acts
13 were committed willfully, maliciously, oppressively, and fraudulently, with the wrongful and
14 deliberate intention of injuring Plaintiffs, and with a conscious disregard for Plaintiffs' rights and
15 Defendants' obligations under California wage and hour laws, all of which has deprived Plaintiffs
16 of their property and legal rights. Therefore, in addition to all other types of relief requested herein,
17 Plaintiffs are entitled to recover punitive and exemplary damages in amounts according to proof at
18 time of trial, but in amounts in excess of the minimum jurisdiction of this Court.

19 34. Defendants have applied, continue to apply the foregoing policies and practices,
20 including their failure to properly compensate Plaintiffs at the minimum wage for such hours worked
21 during each Plaintiffs' mandatory training period in accordance with California law, to Plaintiffs who
22 remain employed by Defendants, Plaintiff formerly employed by Defendants, and to certain
23 individuals who will in the future become employed by Defendants. Such employees have been
24 injured and damaged, and are threatened with further injury and damage, by Defendants' unlawful
25 actions as alleged, and are thus threatened with immediate irreparable harm by the continuation of
26 Defendants' unlawful actions as alleged, and have no complete, adequate remedy at law. Therefore,
27 Plaintiffs request the Court enter an order reflecting appropriate injunctive relief to prevent
28 Defendants from committing such acts in the future.

1 35. WHEREFORE, Plaintiffs request relief as herein provided.

2 **SECOND CAUSE OF ACTION:**

3 **FAILURE TO INDEMNIFY AND REIMBURSE FOR BUSINESS EXPENSES,**
4 **AND UNLAWFUL DEDUCTIONS FROM WAGES,**
5 **UNDER THE LAWS OF THE STATE OF CALIFORNIA,**
6 **BY PLAINTIFFS EMPLOYED IN THE STATE OF CALIFORNIA**

7 **(By All Plaintiffs, Against All Defendants)**

8 36. Plaintiffs hereby reallege, and incorporate by reference in this Cause of Action as
9 though set forth fully herein, the allegations contained in Paragraphs 1 through 35, above. This cause
10 of action is plead by all Plaintiffs, against all Defendants.

11 37. Within the four (4) years before the filing of this Complaint, Defendants have
12 employed Plaintiffs as Agents (and/or in similar positions and/or with similar job titles, duties, and
13 responsibilities), pursuant to the TSA Plan Agreement, throughout the State of California, to conduct
14 and transact Defendants' insurance and financial products business. Defendants have unlawfully
15 denied Plaintiffs wages and other benefits of employment, when as a matter of fact and law, Agents
16 are Defendants' employees pursuant to contract. As a result, Plaintiffs are and have been entitled to
17 the protections of the California Labor Code, including but not limited to sections 2802, et al., with
18 regard to indemnification for expenditures and losses in discharge of their duties for Defendants.
19 Furthermore, Defendants were not permitted to make deductions or set-offs from Plaintiffs' earned
20 wages for items including but not limited to expenses incurred in the performance of their duties,
21 accidents, and/or damages caused while discharging their duties. Pursuant to California Labor Code
22 section 2804, Defendants cannot ask or require Plaintiffs to waive the benefits of California Labor
23 Code section 2802. The benefits and protections of such statutes extend to Plaintiffs, even if they
24 were and are otherwise subject to the exclusion of Labor Code section 1171 as outside salespersons.

25 38. Within the four (4) years before the filing of this Complaint, as Agents (and/or in
26 similar positions and/or with similar job titles, duties, and responsibilities) employed pursuant to the
27 TSA Plan Agreement throughout the State of California, Plaintiffs have been required to, among
28 other items: pay monthly rent on a cubicle in Defendants' offices; pay monthly telephone service

1 charges for a phone line run into their cubicle; pay copy charge fees; and pay for required,
2 specialized software and technical support for that software as a monthly charge. Defendants have
3 also charged Plaintiffs a "commission administration fee" for each policy on which Defendants paid
4 Plaintiffs a commission. These unlawful deductions and/or charges violate California Labor Code
5 §§ 221, 223, 451 and/or 2802.

6 39. In violation of state law, Defendants have refused to perform their obligations to
7 properly indemnify and reimburse Plaintiffs for such items, and avoid making deductions or set-offs
8 from Plaintiffs' earned wages. As a direct and proximate result, Plaintiffs have suffered, and
9 continue to suffer, substantial losses related to the use and enjoyment of such monies, lost interest
10 on such wages, and expenses and attorneys' fees in seeking to compel Defendants to fully perform
11 their obligation under state law, all to their respective damage in amounts according to proof at time
12 of trial, but in amounts in excess of the minimum jurisdiction of this Court. As Defendants' conduct
13 described herein violates the provisions of the California Labor Code regarding indemnification,
14 reimbursement, and unlawful deductions from wages, Plaintiffs are thus entitled to recover all
15 amounts for all such expenses, penalties pursuant to Labor Code section 203, interest, attorneys'
16 fees, and court costs and expenses of suit, pursuant to Labor Code sections 218.6 and 2802,
17 according to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this
18 Court. Plaintiffs are also entitled to recover, in addition to or in lieu of some or all such expenses and
19 benefits, nominal, actual and compensatory damages in amounts according to proof at time of trial,
20 but in amounts in excess of the minimum jurisdiction of this Court.

21 40. Defendants' failure to properly indemnify and reimburse Plaintiffs for such items, and
22 avoid making deductions or set-offs from Plaintiffs' earned wages, in violation of California law,
23 was knowing and intentional. Defendants have refused to pay the expenses properly due each
24 Plaintiff for false and fraudulent reasons. All such acts were committed willfully, maliciously,
25 oppressively, and fraudulently, with the wrongful and deliberate intention of injuring Plaintiffs, and
26 with a conscious disregard for Plaintiffs' rights and Defendants' obligations under California wage
27 and hour laws, all of which have deprived Plaintiffs of their property and legal rights. Therefore, in
28 addition to all other types of relief requested herein, Plaintiffs are entitled to recover punitive and

1 exemplary damages in amounts according to proof at time of trial, but in amounts in excess of the
2 minimum jurisdiction of this Court.

3 41. Defendants have applied, continue to apply the foregoing policies and practices to
4 Plaintiffs who remain employed by Defendants, Plaintiff formerly employed by Defendants, and to
5 certain individuals who will in the future become employed by Defendants. Such employees have
6 been injured and damaged, and are threatened with further injury and damage, by Defendants'
7 unlawful actions as alleged, and are thus threatened with immediate irreparable harm by the
8 continuation of Defendants' unlawful actions as alleged, and have no complete, adequate remedy
9 at law. Therefore, Plaintiffs request the Court enter an order reflecting appropriate injunctive relief
10 to prevent Defendants from committing such acts in the future.

11 42. WHEREFORE, Plaintiffs request relief as herein provided.

12 **THIRD CAUSE OF ACTION:**

13 **FAILURE TO PROVIDE PROPERLY ITEMIZED WAGE STATEMENTS,**
14 **UNDER THE LAWS OF THE STATE OF CALIFORNIA,**
15 **BY PLAINTIFFS EMPLOYED IN THE STATE OF CALIFORNIA**

16 **(By All Plaintiffs, Against All Defendants)**

17 43. Plaintiffs hereby reallege, and incorporate by reference in this Cause of Action as
18 though set forth fully herein, the allegations contained in Paragraphs 1 through 42, above. This
19 cause of action is plead by all Plaintiffs, against all Defendants.

20 44. Within the four (4) years before the filing of this Complaint, Defendants have
21 employed Plaintiffs as Agents (and/or in similar positions and/or with similar job titles, duties,
22 and responsibilities) throughout the State of California, to conduct and transact Defendants'
23 insurance and financial products business. Defendants have unlawfully denied Plaintiffs wages
24 and other benefits of employment, when as a matter of fact and law, Agents are Defendants'
25 "employees" pursuant to contract. As a result, Plaintiffs are, and remain, entitled to the
26 protections of the California Industrial Welfare Commission Wage Order No. 4-2001, originally
27 and as amended, and the California Labor Code, with regard to the requirements that Defendants
28 provide Plaintiffs with correctly itemized wage statements at each pay period, but in no event

1 fewer than twice monthly, including proper payment of wages and expenses, and proper
2 itemization of employees' pay, and withholding of deductions authorized in writing by
3 employees, among other items.

4 45. In violation of state law, Defendants have refused to perform their obligations to
5 provide Plaintiffs with properly itemized wage statements, including proper payment of wages
6 and expenses, and proper itemization of employees' pay, and of deductions authorized in writing
7 by employees. As a direct and proximate result, Plaintiffs have suffered, and continue to suffer,
8 substantial losses related to the use and enjoyment of such wages, monies, and wage statements
9 and wage benefits, lost interest on wages and expenses and benefits, and expenses and attorneys'
10 fees in seeking to compel Defendants to fully perform their obligation under state law, all to their
11 respective damage in amounts according to proof at time of trial, but in amounts in excess of the
12 minimum jurisdiction of this Court. Plaintiffs are thus entitled to recover all amounts for all such
13 wages and expenses and benefits on such wage statements, penalties, interest, attorneys' fees,
14 and court costs and expenses of suit, pursuant to Labor Code sections 218.6 and 226, according
15 to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this Court.
16 Plaintiffs are also entitled to recover, in addition to or in lieu of some or all such wages and
17 expenses and benefits, nominal, actual and compensatory damages in amounts according to proof
18 at time of trial, but in amounts in excess of the minimum jurisdiction of this Court.

19 46. Defendants' failure to provide Plaintiffs with properly itemized wage statements,
20 including proper payment of wages and expenses, and proper itemization of employees' pay, and
21 proper withholding of payroll taxes, in violation of California law, was knowing and intentional.
22 Defendants have refused to provide the properly itemized wage statements due each Plaintiff for
23 false and fraudulent reasons. All such acts were committed willfully, maliciously, oppressively,
24 and fraudulently, with the wrongful and deliberate intention of injuring Plaintiffs, and with a
25 conscious disregard for Plaintiffs' rights and Defendants' obligations under California wage and
26 hour laws, all of which have deprived Plaintiffs of their property and legal rights. Therefore, in
27 addition to all other types of relief requested herein, Plaintiffs are entitled to recover punitive and
28 exemplary damages in amounts according to proof at time of trial, but in amounts in excess of

1 the minimum jurisdiction of this Court.

2 47. Defendants have applied, continue to apply the foregoing policies and practices to
3 Plaintiffs who remain employed by Defendants, Plaintiff formerly employed by Defendants, and
4 to certain individuals who will in the future become employed by Defendants. Such employees
5 have been injured and damaged, and are threatened with further injury and damage, by
6 Defendants' unlawful actions as alleged, and are thus threatened with immediate irreparable
7 harm by the continuation of Defendants' unlawful actions as alleged, and have no complete,
8 adequate remedy at law. Therefore, Plaintiffs request the Court enter an order reflecting
9 appropriate injunctive relief to prevent Defendants from committing such acts in the future.

10 48. WHEREFORE, Plaintiffs request relief as herein provided.

11 **FOURTH CAUSE OF ACTION:**

12 **WAGES UNLAWFULLY WITHHELD AT TERMINATION,**
13 **UNDER THE LAWS OF THE STATE OF CALIFORNIA,**
14 **BY PLAINTIFFS EMPLOYED IN THE STATE OF CALIFORNIA**

15 **(By All Plaintiffs, Against All Defendants)**

16 49. Plaintiffs hereby reallege, and incorporate by reference in this Cause of Action as
17 though set forth fully herein, the allegations contained in Paragraphs 1 through 48, above. This
18 cause of action is plead by all Plaintiffs, against all Defendants.

19 50. Within the four (4) years before the filing of this Complaint, Defendants have
20 employed Plaintiffs as Agents (and/or in similar positions and/or with similar job titles, duties,
21 and responsibilities) pursuant to the TSA Plan Agreement, throughout the State of California, to
22 conduct and transact Defendants' insurance and financial products business. Defendants have
23 unlawfully denied Plaintiffs wages and other benefits of employment, when as a matter of fact
24 and law, Agents are Defendants' employees pursuant to contract. As a result, Plaintiffs are and
25 have been entitled to the protections of the California Labor Code, with regard to the
26 requirements that Defendants provide Plaintiffs with all earned wages as of the date of each
27 former-employee-Plaintiffs' termination of employment with Defendants.

28 51. In violation of state law, Defendants have refused to perform their obligations to

1 provide former-employee-Plaintiffs with all earned wages as of the date of each former-
2 employee-Plaintiffs' termination of employment with Defendants. As a direct and proximate
3 result, Plaintiffs have suffered, and continue to suffer, substantial losses related to the use and
4 enjoyment of such compensation, all to their respective damage in amounts according to proof at
5 time of trial, but in amounts in excess of the minimum jurisdiction of this Court. As Defendants'
6 conduct described herein violates the provisions of the California Labor Code regarding proper
7 payment of all earned wages as of the date of each former-employee-Plaintiffs' termination of
8 employment with Defendants, Plaintiffs are thus entitled to recover all amounts for all such
9 compensation plus waiting time penalties pursuant to Labor Code sections 200 - 203, according
10 to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this Court.
11 Plaintiffs are also entitled to recover, in addition to or in lieu of some or all such compensation
12 and benefits, nominal, actual and compensatory damages in amounts according to proof at time
13 of trial, but in amounts in excess of the minimum jurisdiction of this Court.

14 52. Defendants have applied, continue to apply the foregoing policies and practices to
15 Plaintiffs who remain employed by Defendants, Plaintiff formerly employed by Defendants, and
16 to certain individuals who will in the future become employed by Defendants. Such employees
17 have been injured and damaged, and are threatened with further injury and damage, by
18 Defendants' unlawful actions as alleged, and are thus threatened with immediate irreparable
19 harm by the continuation of Defendants' unlawful actions as alleged, and have no complete,
20 adequate remedy at law. Therefore, Plaintiffs request the Court enter an order reflecting
21 appropriate injunctive relief to prevent Defendants from committing such acts in the future.

22 53. WHEREFORE, Plaintiffs request relief as herein provided.

23 **FIFTH CAUSE OF ACTION:**

24 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 221, 450 AND 2802**

25 **(By All Plaintiffs, Against All Defendants)**

26 54. Plaintiffs hereby reallege, and incorporate by reference in this Cause of Action as
27 though set forth fully herein, the allegations contained in paragraphs 1 through 53, above. This
28 cause of action is plead by all Plaintiffs, against all Defendants.

1 55. Within the preceding four (4) years, Defendants maintained a scheme by which
2 Plaintiffs have been required to pay Defendants for, among other items: pay monthly rent on a
3 cubicle in Defendants' offices; pay monthly telephone service charges for a phone line run into
4 their cubicle; pay copy charge fees; and pay for required, specialized software and technical
5 support for that software as a monthly charge. Defendants have also charged Plaintiffs a
6 "commission administration fee" for each policy on which Defendants paid Plaintiffs' a
7 commission. Further, upon the end of an Agent's employment with Defendants, Defendants
8 demanded immediate payment of any of these business expenses and/or fees assessed against the
9 Agent by Defendants and remaining unpaid at the end of employment, and threatened the Agent
10 with collections action if the Agent failed to make immediate payment. This Cause of Action
11 seeks recovery of such sums paid by Agents (and/or others in similar positions and/or with
12 similar job titles, duties, and responsibilities) after the end of their employment and in response
13 to such threats of collections activity made by Defendants.

14 56. At all times relevant, California Labor Code sections 221, 450 and 2802 were in
15 effect and prohibited Defendants' collection of wages previously paid to employees and/or
16 coercing employees to patronize Defendants by paying rent for cubicles, charges for telephone
17 service, and surcharges for copying, among others. Further, Defendants' attempts to collect these
18 sums from Agents after the end of employment constitutes a further violation of these sections.

19 57. Defendants' actions described herein, in violation of California law, were
20 knowing and intentional. All such acts were committed willfully, maliciously, oppressively, and
21 fraudulently, with the wrongful and deliberate intention of injuring Plaintiffs, and with a
22 conscious disregard for Plaintiffs' rights and Defendants' obligations under California wage and
23 hour laws, all of which have deprived Plaintiffs of their property and legal rights. Therefore, in
24 addition to all other types of relief requested herein, Plaintiffs are entitled to recover punitive and
25 exemplary damages in amounts according to proof at time of trial, but in amounts in excess of
26 the minimum jurisdiction of this Court.

27 58. Defendants have applied, and continue to apply, the foregoing policies and
28 practices to Plaintiffs who remain employed by Defendants, Plaintiff formerly employed by

1 Defendants, and to certain individuals who will in the future become employed by Defendants.
2 Such employees have been injured and damaged, and are threatened with further injury and
3 damage, by Defendants' unlawful actions as alleged, and are thus threatened with immediate
4 irreparable harm by the continuation of Defendants' unlawful actions as alleged, and have no
5 complete, adequate remedy at law. Therefore, Plaintiffs request the Court enter an order
6 reflecting appropriate injunctive relief to prevent Defendants from committing such acts in the
7 future.

8 59. WHEREFORE, Plaintiffs request relief as herein provided.

9 **SIXTH CAUSE OF ACTION**

10 **UNFAIR BUSINESS PRACTICES IN VIOLATION OF**
11 **CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTIONS 17200, ET. SEQ.,**
12 **BY PLAINTIFFS EMPLOYED IN THE STATE OF CALIFORNIA**

13 **(By All Plaintiffs, Against All Defendants)**

14 60. Plaintiffs hereby reallege, and incorporate by reference in this Cause of Action as
15 though set forth fully herein, the allegations contained in Paragraphs 1 through 59, above. This
16 cause of action is plead by all Plaintiffs, against all Defendants.

17 61. Defendants engage in business practices, offer their insurance policies and
18 financial products for sale, and advertise their goods and services within the jurisdiction of the
19 State of California. As such, Defendants have a duty to comply with the provisions of the Unfair
20 Business Practices Act as set forth in California Business & Professions Code sections 17200, *et*
21 *seq.*, which Act prohibits, *inter alia*, unlawful, unfair, and/or fraudulent business acts or practices
22 and unfair, deceptive, untrue, or misleading advertising by any person, firm, corporation, or
23 association within the jurisdiction of the State of California.

24 62. By violating the foregoing provisions of California's labor and employment laws,
25 and by failing to take immediate and appropriate measures to address these violations,
26 Defendants' acts constitute unfair business practices under Business and Professions Code
27 sections 17200, *et. seq.* Defendants' violations of California's labor and employment laws
28 constitute a business practice because they have been done repeatedly over a significant period of

1 time throughout the State of California, and in a systematic manner to the detriment of many
2 Plaintiffs.

3 63. As a direct, foreseeable, and proximate result of Defendants' acts and omissions
4 alleged herein, for the four (4) years preceding the filing of this action Plaintiffs, including
5 Plaintiff Opyrchal, have lost money and suffered injuries, and Defendants have also been
6 unjustly enriched as a result of unfair competition. Plaintiffs therefore request restitution of all
7 monies paid to Defendants by the Plaintiffs pursuant to the illegal acts alleged herein, and
8 request that profits to be disgorged from Defendants, all in an amount according to proof at time
9 of trial, in lieu of or in addition to other types of relief requested herein, but in excess of the
10 minimum jurisdiction of this Court.

11 64. Defendants have applied, continue to apply the foregoing policies and practices,
12 including their failure to properly compensate Plaintiffs at the minimum wage for such hours
13 worked, and have unlawfully deducted business expenses from employee's wages, in violation of
14 California law, to Plaintiffs who remain employed by Defendants, Plaintiffs formerly employed
15 by Defendants, and to certain individuals who will in the future become employed by
16 Defendants. Such employees have been injured and damaged, and are threatened with further
17 injury and damage, by Defendants' unlawful actions as alleged, and are thus threatened with
18 immediate irreparable harm by the continuation of Defendants' unlawful actions as alleged, and
19 have no complete, adequate remedy at law. Therefore, Plaintiffs request the Court enter an order
20 reflecting appropriate injunctive relief to prevent Defendants from committing such acts in the
21 future.

22 65. WHEREFORE, Plaintiffs request relief as herein provided.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

SEVENTH CAUSE OF ACTION:

**UNLAWFUL BUSINESS PRACTICES IN VIOLATION OF
CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTIONS 17200, ET. SEQ.,
BY PLAINTIFFS EMPLOYED IN THE STATE OF CALIFORNIA**

(By All Plaintiffs, Against All Defendants)

66. Plaintiffs hereby reallege, and incorporate by reference in this Cause of Action as though set forth fully herein, the allegations contained in Paragraphs 1 through 65, above. This cause of action is plead by all Plaintiffs, against all Defendants.

67. Defendants engage in business practices, offer their insurance policies and financial products for sale, and advertise their goods and services within the jurisdiction of the State of California. As such, Defendants have a duty to comply with the provisions of the Unfair Business Practices Act as set forth in California Business & Professions Code sections 17200, *et seq.*, which Act prohibits, *inter alia*, unlawful, unfair, and/or fraudulent business acts or practices and unfair, deceptive, untrue, or misleading advertising by any person, firm, corporation, or association within the jurisdiction of the State of California.

68. By violating the foregoing provisions of California's labor and employment laws, and by failing to take immediate and appropriate measures to address these violations, Defendants' acts constitute unlawful business practices under Business and Professions Code sections 17200, *et. seq.* Defendants' violations of California's labor and employment laws constitutes a business practice because they have been done repeatedly over a significant period of time throughout the State of California, and in a systematic manner to the detriment of scores of Plaintiffs.

69. As a direct, foreseeable, and proximate result of Defendants' acts and omissions alleged herein, for the four (4) years preceding the filing of this action Plaintiffs, including Plaintiff Opyrchal, have lost money and suffered injuries, and Defendants have also been unjustly enriched as a result of unfair competition. Plaintiffs therefore request restitution of all monies paid to Defendants by the Plaintiffs pursuant to the illegal acts alleged herein, and request that profits to be disgorged from Defendants, all in an amount according to proof at time

1 of trial, in lieu of or in addition to other types of relief requested herein, but in excess of the
 2 minimum jurisdiction of this Court.

3 70. Defendants have applied, continue to apply the foregoing policies and practices,
 4 including their failure to properly compensate Plaintiffs at the minimum wage for such hours
 5 worked, and have unlawfully deducted business expenses from employee's wages, in violation of
 6 California law, to Plaintiffs who remain employed by Defendants, Plaintiff formerly employed by
 7 Defendants, and to certain individuals who will in the future become employed by Defendants.
 8 Such employees have been injured and damaged, and are threatened with further injury and
 9 damage, by Defendants' unlawful actions as alleged, and are thus threatened with immediate
 10 irreparable harm by the continuation of Defendants' unlawful actions as alleged, and have no
 11 complete, adequate remedy at law. Therefore, Plaintiffs request the Court enter an order
 12 reflecting appropriate injunctive relief to prevent Defendants from committing such acts in the
 13 future.

14 71. WHEREFORE, Plaintiffs request relief as herein provided.

15 **V. PRAYER FOR RELIEF**

16 72. Plaintiffs hereby reallege, and incorporate by reference in this Section as though
 17 set forth fully herein, the allegations contained in Paragraphs 1 through 71, above.

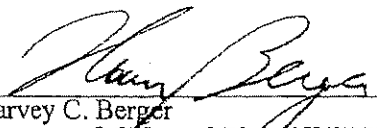
18 WHEREFORE, Plaintiffs pray for judgment as follows:

- 19 1. For nominal damages;
- 20 2. For actual damages;
- 21 3. For compensatory damages;
- 22 4. For restitution of all monies, wages, expenses and benefits due to Plaintiffs;
- 23 5. For disgorged profits from the unfair/unlawful business practices of Defendants;
- 24 6. For interest accrued to date;
- 25 7. For interest pursuant to Labor Code section 218.6, 1194, and 1194.2;
- 26 8. For penalties pursuant to Labor Code sections 203 and 226;
- 27 9. For liquidated damages pursuant to Labor Code section 1194.2;
- 28 10. For punitive and exemplary damages;

11. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226, 1194, and 2802;
12. For reasonable attorneys' fees pursuant to Labor Code sections 226, 1194, and 2802, and C.C.P. section 1021.5;
13. For appropriate injunctive relief;
14. For appropriate equitable relief;
15. For appropriate declaratory relief;
16. For all such other and further relief that the Court may deem just and proper.

Dated: 12/8/06

POPE, BERGER & WILLIAMS, LLP,
LAW OFFICES OF DOUGLAS J. CAMPION

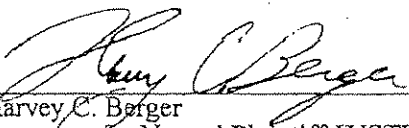
By: 
Harvey C. Berger
Attorneys for Named Plaintiff JUSTIN
OPYRCHAL, individually, and on behalf of all
other similarly situated current and former
employees of Defendants in the State of California

DEMAND FOR JURY TRIAL

Named Plaintiff JUSTIN OPYRCHAL, individually, and on behalf of all other similarly situated current and former employees of Defendants in the State of California, hereby demands a jury trial.

Dated: 12/8/06

POPE, BERGER & WILLIAMS, LLP,
LAW OFFICES OF DOUGLAS J. CAMPION

By: 
Harvey C. Berger
Attorneys for Named Plaintiff JUSTIN
OPYRCHAL, individually, and on behalf of all
other similarly situated current and former
employees of Defendants in the State of California

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): A. Mark Pope / Harvey C. Berger POPE, BERGER & WILLIAMS, LLP 550 West C Street, Suite 1400 San Diego, CA 92101 TELEPHONE NO.: (619) 595-1366 FAX NO.: (619) 236-9677 ATTORNEY FOR (Name): PLAINTIFFS		77798 / 102973 FOR COURT USE ONLY CONFORMED COPY OF ORIGINAL FILED Los Angeles Superior Court DEC 11 2006 John A. Clark, Executive Officer/Clerk By <u>D. Garcia</u> , Deputy	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: CENTRAL DISTRICT			
CASE NAME: OPYRCHAL v. NEW YORK LIFE			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)	
		CASE NUMBER: JUDGE: BC363208 DEPT.:	

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WFD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WFD (23) Non-PI/PD/WFD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WFD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	---

2. This case ☒ is ☐ is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Type of remedies sought (check all that apply):
 a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): Seven (7)
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: December 8, 2006

Harvey C. Berger, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers

If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 5 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. You do not need to submit a cover sheet with amended papers. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 201.8(c) and 227 of the California Rules of Court.

To Parties in Complex Cases

In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 1800 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)-Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice-Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach-Seller Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case-Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ-Administrative Mandamus
Writ-Mandamus on Limited Court Case Matter
Writ-Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal-Labor
Commissioner Appeals

Provisionally Complex Civil

Litigation (Cal. Rules of Court Rules 1800-1812)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition

SHORT TITLE:

OPYRCHAL v. NEW YORK LIFE INSURANCE COMPANY, INC.

CASE NUMBER:

EC363208

CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☒ YES CLASS ACTION? ☒ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL 21 ☐ HOURS ☒ DAYS.

Item II. Select the correct district and courthouse location (4 steps - If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column B below which best describes the nature of this case.

Step 3: In Column C, circle the reason for the court location choice that applies to the type of action you have checked.

For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (See Column C below)

- | | |
|---|--|
| 1. Class Actions must be filed in the County Courthouse, Central District. | 6. Location of property or permanently garaged vehicle. |
| 2. May be filed in Central (Other county, or no Bodily Injury/Property Damage). | 7. Location where petitioner resides. |
| 3. Location where cause of action arose. | 8. Location wherein defendant/respondent functions wholly. |
| 4. Location where bodily injury, death or damage occurred. | 9. Location where one or more of the parties reside. |
| 5. Location where performance required or defendant resides. | 10. Location of Labor Commissioner Office. |

Step 4: Fill in the information requested on page 4 in item III; complete item IV. Sign the declaration.

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death - Uninsured Motorist	1., 2., 4.
Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage	2.
	<input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2.
Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons	1., 2., 4.
	<input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 2., 4.
Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 2., 4.
	<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 2., 4.
	<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1., 2., 3.
	<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.
Intellectual Property (19)	<input type="checkbox"/> A6016 Intellectual Property	2., 3.

SHORT TITLE: OPYRCHAL v. NEW YORK LIFE INSURANCE COMPANY, INC.	CASE NUMBER
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A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input checked="" type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach-Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute (not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer- Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

SHORT TITLE:

OPYRCHAL v. NEW YORK LIFE INSURANCE COMPANY, INC.

CASE NUMBER

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ/Judicial Review	2., 8.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

SHORT TITLE: OPYRCHAL v. NEW YORK LIFE INSURANCE COMPANY, INC.	CASE NUMBER
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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE <input type="checkbox"/> 1. <input type="checkbox"/> 2. <input checked="" type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.			ADDRESS: Brea Corporate Plaza 3230 East Imperial Highway
CITY: Brea	STATE: California	ZIP CODE: 92801	

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Stanley Mosk courthouse in the Central District District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: December 8, 2006

Harvey C. Berger

(SIGNATURE OF ATTORNEY FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LASC Approved CIV 109 03-04 (Rev. 03/06).
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form 982(a)(27), if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
NOTICE OF CASE ASSIGNMENT - UNLIMITED CIVIL CASE**

Case Number _____

BC363208

THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT

Your case is assigned for all purposes to the judicial officer indicated below.

ASSIGNED JUDGE	DEPT	ROOM	ASSIGNED JUDGE	DEPT	ROOM
Hon. Gregory Alarcon	36	410	Hon. William F. Highberger	32	406
Hon. Alice E. Altoon	28	318	Hon. Ernest M. Hiroshige	54	512
Hon. Conrad Aragon	49	509	Hon. Jane L. Johnson	56	514
Hon. Helen I. Bendix	18	308	Hon. Morris B. Jones	48	506
Hon. Elihu M. Berle	42	416	Hon. Malcolm H. Mackey	55	515
Hon. Tricia Ann Bigelow	23	315	Hon. Jon M. Mayeda	72	731
Hon. Soussan G. Bruguera	71	729	Hon. Rita Miller	16	306
Hon. Susan Bryant-Deason	52	510	Hon. David L. Minning	61	632
Hon. James C. Chalfant	13	630	Hon. Aurelio Munoz	47	507
Hon. Victoria Chaney*	324	CCW	Hon. Mary Ann Murphy	25	317
Hon. Judith C. Chirlin	89	532	Hon. Joanne O'Donnell	37	413
Hon. Ralph W. Dau	57	517	Hon. Victor H. Person	39	415
Hon. Maurcen Duffy-Lewis	38	412	Hon. Mel Red Recana	45	529
Hon. James R. Dunn	26	316	Hon. Andria K. Richey	31	407
Hon. Lee Edmon	68	617	Hon. Teresa Sanchez-Gordon	74	735
Hon. William F. Fahey	78	730	Hon. James E. Satt	40	414
Hon. Irving S. Feffer	51	511	Hon. John P. Shook	53	513
Hon. Edward A. Ferns	69	621	Hon. Ronald M. Sohigian	41	417
Hon. Kenneth R. Freeman	64	601	Hon. Michael L. Stern	62	600
Hon. Haley J. Fromholz	20	310	Hon. Mary Thornton House	17	309
Hon. Richard Fruin	15	307	Hon. Rolf M. Treu	58	516
Hon. Terry A. Green	14	300	Hon. John Shepard Wiley Jr.	50	508
Hon. Elizabeth A. Grimes	30	400	Hon. David A. Workman	19	311
Hon. Paul Gutman	34	408	Hon. George Wu	33	409
Hon. Robert L. Hess	24	314		35	411
	3	224	Other		

*Class Actions

Given to the Plaintiff/Cross-Complainant/Attorney of Record on _____ JOHN A. CLARKE, Executive Officer/Clerk

By _____, Deputy Clerk



from the
LOS ANGELES SUPERIOR COURT
ADR DEPARTMENT

If you have a general jurisdiction case involving one of these 6 subject matter areas:

- commercial
- employment
- medical malpractice
- real estate
- trade secrets
- unfair competition

***Your case may be eligible for the court's pilot
Early Neutral Evaluation (ENE) program.***

- ♦ **ENE can reduce litigation time and costs and promote settlement.**
- ♦ ENE is an informal process that offers a non-binding evaluation by an experienced neutral lawyer with expertise in the subject matter of the case. After counsel present their claims and defenses, the neutral evaluates the case based on the law and the evidence.
- ♦ **ENE is voluntary and confidential.**
- ♦ The benefits of ENE include helping to clarify, narrow or eliminate issues, identify areas of agreement, offer case-planning suggestions and, if requested by the parties, assist in settlement.
- ♦ **The first three (3) hours of the ENE session are free of charge.**

See back for a list of participating pilot courthouses and departments.

For additional ENE information, visit the Court's web site at www.lasuperiorcourt.org/adr

PARTICIPATING PILOT COURTHOUSES:

(General Jurisdiction Case Only)

- **Chatsworth**
- **Pomona**
- **Santa Monica**
- **Van Nuys**
- **Stanley Mosk** (Departments listed below only.)

Department 15

Department 16

Department 28

Department 30

Department 31

Department 32

Department 38

Department 42

Department 47

Department 50

Department 52

Department 55

Department 56

Department 68

Department 71

Department 89

LOS ANGELES SUPERIOR COURT
CIVIL ALTERNATIVE DISPUTE RESOLUTION (ADR) PROGRAMS
 [CRC 201.9(c) Information about Alternative Dispute Resolution]

The plaintiff shall serve a copy of the ADR Information package on each defendant along with the complaint.

ADR PROGRAMS

"Alternative Dispute Resolution (ADR)" is the term used to describe all the other options available for settling a dispute which once had to be settled in court. ADR processes such as arbitration, mediation, early neutral evaluation (ENE), and settlement conferences, are less formal than court and provide opportunities for litigants to reach an agreement using a problem-solving approach rather than the more adversarial approach of litigation.

MEDIATION A neutral third party called a "mediator" helps participants in the dispute create their own resolution. The mediator helps facilitate a discussion in which the parties reach a mutually agreed upon settlement. Therefore, mediation allows for more creative resolutions to disputes than other ADR processes.

The Court Mediation Program is governed by Code of Civil Procedure sections 1775-1775.15, California Rules of Court, Rules 1620-1622 and 1630-1639, Evidence Code sections 1115-1128, and Los Angeles Superior Court Rules, Chapter 12.

ARBITRATION A neutral third party called an "arbitrator" listens to each side in the dispute present its case. The arbitrator, who is an attorney, issues a decision based on the evidence. Although evidence is presented, arbitration is a less formal process than litigation. The decision is non-binding unless the parties agree in writing to binding arbitration.

The Court Arbitration Program is governed by Code of Civil Procedure sections 1141.10-1141.31, California Rules of Court, Rules 1600-1618, and Los Angeles Superior Court Rules, Chapter 12.

ENE A neutral third party called an "evaluator" will provide the parties and their counsel, on a voluntary basis and in a confidential session, the opportunity to make summary presentations of their claims and defenses, including key evidence. After hearing the presentations, the evaluator, who is an experienced lawyer with subject-matter expertise, offers a non-binding evaluation.

The evaluator will also help clarify, narrow or eliminate issues, identify areas of agreement, offer case-planning suggestions, and, if requested by parties, settlement assistance. Although settlement is not the primary goal of ENE, the ENE process can reduce litigation time and costs and promote settlement.

The Court ENE Program is governed by Los Angeles Superior Court Rules, Chapter 12.

SETTLEMENT CONFERENCE A neutral third party called a "settlement officer," who is also a retired judge, assists the parties in negotiating their own settlement and may evaluate the strengths and weaknesses of the case.

JURISDICTIONAL LIMITATIONS

MEDIATION, ARBITRATION & ENE Any case in which the amount in dispute is between \$25,000-\$50,000 per plaintiff, and was not previously referred to the Court ADR Program, can be sent to the Court ADR Program for mediation, arbitration, or ENE by stipulation, election by plaintiff or order of the court.

Parties may *voluntarily* request or initiate a mediation or arbitration proceeding, regardless of the amount in dispute.

SETTLEMENT CONFERENCE Any case, regardless of the amount in dispute, may be ordered to a settlement conference. There is no monetary limit.

REFERRAL INFORMATION

After the Court determines the suitability of a case for ADR, the Court directs the parties to the ADR Department to initiate the ADR process. Once the parties have completed the ADR intake forms, a Neutral may be selected.

NEUTRAL SELECTION

Parties may select a mediator or arbitrator from the Court Party Pay Panel or Pro Bono Panel or may hire someone privately, at their discretion. Parties are assigned to a settlement officer by court staff.

COURT ADR PANELS

**PARTY PAY
PANEL** The Party Pay Panel consists of mediators and arbitrators who have achieved a specified level of experience in court-connected cases. The parties (collectively) may be charged \$150.00 per hour for the first three hours of hearing time. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the mediator or arbitrator if the parties consent in writing.

**PRO BONO
PANEL** The Pro Bono Panel consists of trained mediators and arbitrators who have not yet gained the experience to qualify for the Party Pay Panel and experienced mediators and arbitrators who make themselves available pro bono. Mediators and arbitrators donate their time to the courts as a way of supporting the judicial system. It is the policy of the Court that all pro bono volunteer mediators and arbitrators provide three hours hearing time per case. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the mediator or arbitrator if the parties consent in writing.

ENE The Court ENE Panel consists of experienced lawyers who have been trained to serve as neutral evaluators. The evaluators provide preparation time and three hours hearing time per case at no charge. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the evaluator if the parties consent in writing.

**PRIVATE
NEUTRAL** The market rate for private neutrals can range from \$200-\$1,000 per hour.

For additional information, visit the Court ADR web application at www.lasuperiorcourt.org (click on ADR).

Partially Funded by the Los Angeles County Dispute Resolution Program

**LOS ANGELES COUNTY
DISPUTE RESOLUTION PROGRAMS ACT (DRPA) CONTRACTORS**

The following organizations provide mediation services under contract with the Los Angeles County Department of Community & Senior Services. Services are provided to parties in any civil case filed in the Los Angeles County Superior Court. Services are not provided under this program to family, probate, traffic, criminal, appellate, mental health, unlawful detainer/eviction or juvenile court cases.

Asian-Pacific American Dispute Resolution Center
(213) 250-8190
(Spanish & Asian languages capability)

California Academy of Mediation Professionals
(818) 377-7250

Center for Conflict Resolution
(818) 380-1840

Inland Valleys Justice Center
(909) 397-5780
(Spanish language capability)

Office of the Los Angeles City Attorney Dispute Resolution Program
(213) 485-8324
(Spanish language capability)

Los Angeles County Bar Association Dispute Resolution Services
toll free number 1-877-4Resolve (737-6583) or (213) 896-6533
(Spanish language capability)

Los Angeles County Department of Consumer Affairs
(213) 974-0825
(Spanish language capability)

The Loyola Law School Center for Conflict Resolution
(213) 736-1145
(Spanish language capability)

Martin Luther King Legacy Association Dispute Resolution Center
(323) 290-4132
(Spanish language capability)

City of Norwalk
(562) 929-5603

DRPA Contractors do not provide legal advice or assistance, including help with responding to summonses. Accessing these services does not negate any responsibility you have to respond to a summons or appear at any set court date. See the reverse side of this sheet for information on the mediation process and obtaining legal advice.

THIS IS A TWO-SIDED DOCUMENT.

What is the goal of mediation? The goal is to assist the parties in reaching a mutually acceptable agreement or understanding on some or all of the issues. The parties jointly become the primary decision maker in how to resolve the issues as opposed to the traditional judge and/or jury system.	
Do I need an attorney for this? While it is recommended to have an attorney and/or receive legal advice before the mediation starts, you are not required to have representation. If you do have an attorney, they may participate in the mediation with you.	
How long does it take? Face-to-face mediations generally last one to three hours. Telephone conciliations, in which the parties do not meet face to face, vary from a few days to several weeks. Much depends on the number of parties involved and the complexities of the issues. When the mediation takes place depends on parties scheduling availability.	
A Mediator helps parties... <ul style="list-style-type: none"> ◆ Have productive discussions ◆ Avoid or break impasses ◆ Defuse controversy ◆ Generate options that have potential for mutual gain ◆ Better understand each other's concerns and goals ◆ Focus on their interests rather than their positions 	A Mediator does not... <ul style="list-style-type: none"> ◆ Provide advice or opinions ◆ Offer legal information ◆ Make decisions for parties ◆ Represent or advocate for either side ◆ Judge or evaluate anyone or anything ◆ Conduct research ◆ "Take Sides"
What does it cost? The first three hours of any mediation are free. Thereafter, charges are based on income or revenue. All fees are waived for low-income individuals.	Legal Advice/Information If you want to retain an attorney, a list of state certified referral services is at courtinfo.ca.gov which also has an on-line self help legal center. Self-Help Legal Access Centers are at the Inglewood, Palmdale, Pomona, and Van Nuys courthouses. nls-la.org and lafia.org Court Personnel can answer non-legal questions (forms, fees, fee waivers). lasuperiorcourt.org Low-income individuals may qualify for help from non-profit legal organizations. Court Personnel and DRPA contractors have such listings.
What is the difference between the contractors listed and the Superior Court ADR Office? The services offered by the contractors listed may be accessed immediately. Those offered by the Superior Court ADR Office, also a DRPA contractor, may not be accessed by parties until a court appearance, or at the directive of the judge assigned to the case.	
<p style="text-align: center;">Dispute Resolution Programs Act (DRPA) Grants Administration Office (213) 738-2621 (The DRP Office is not a Superior Court Office. Consult your phone directory to locate the number of the Court Office on your summons.)</p>	

THIS IS A TWO-SIDED DOCUMENT.

NAME, ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp.
ATTORNEY FOR (Name):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			
STIPULATION TO PARTICIPATE IN ALTERNATIVE DISPUTE RESOLUTION (ADR)			CASE NUMBER:

The undersigned parties stipulate to participate in an Alternative Dispute Resolution (ADR) process in the above-entitled action, as follows:

- ☐ Mediation
☐ Non-Binding Arbitration
☐ Binding Arbitration
☐ Early Neutral Evaluation
☐ Settlement Conference
☐ Other ADR Process (describe): _____

Dated: _____

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

☐ Additional signature(s) on reverse

Short Title	Case Number
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Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

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Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney